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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,362

01/05/2004

Radhakrishnan Janardanan Nair

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08/22/2007

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EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

08/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/751,362

Applicant(s)

NAIR ET AL.

Examiner

Ginger T. Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4 and 10-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 July 2007 has been entered.

Status of the claims

Claims 1-11 are pending in the application, claims 3 and 5-9 are withdrawn from consideration as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Pargass et al (US 6,558,499).

Claim 1: Pargass et al disclose an absorbent product (10) comprising a package and at least n absorbent articles contained in the package, wherein n is greater than 10 (column 5, lines 3-5), each of the absorbent articles having a body contacting surface (14) and a garment contacting surface (22) opposing the body contacting surface, each of the absorbent articles

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comprising: a component material (26) disposed between the body contacting surface (14) and the garment contacting surface (22), the component material (26) having a printed graphic (21, 21') which is seen through either the body contacting surface or the garment contacting surface (figs. 1 and 2); wherein the printed graphic (21, 21') of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles (c. 15, ll. 44-52 and c. 15, ll. 60 to c. 16, ll. 1-2) and all of the printed graphics (21, 21') of the n absorbent articles have a predetermined association (c. 10, ll. 17-21; see also c. 6, ll. 59; c. 7, ll. 12-15; c. 10, ll. 36-37). See also c. 2, ll. 9-13, disclosing that printed graphics having a predetermined association are known in the diaper art.

Further,

Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, ___ F.3d ___, 2004 WL 1068957 (Fed. Cir. May 13, 2004). See also *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983) ("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

See MPEP § 2112.01 III.

With respect to the limitations of the inkjet printed graphic being printed online, Pargass et al disclose diapers having graphics printed thereon. Additionally, the method of printing the graphic is a product-by-process limitation. Accordingly, § 2113 of the MPEP, some of which is reproduced below, dictates the manner in which the claims have been examined.

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

It is further noted that the end product as claimed is a diaper not a method of printing graphics, i.e. if a garment of the prior art is the same as the end product in the claims, the claims are unpatentable even though it was made using one several methods of printing. Therefore, even if Pargass et al would teach inkjet printed diapers, since the end product of the prior art discussed *supra* is the same as the end product claimed, the claims are unpatentable.

Claim 2: Pargass et al disclose the predetermined association includes a predetermined order (c. 10, ll. 17-21; see also c. 10, ll. 36-37; c. 7, ll. 12-15; c. 6, l. 59, and the n absorbent articles are stacked in the package in accordance with the predetermined order (c. 15, l. 60-67 to c. 16, ll. 1-2).

Claim 4: Pargass et al disclose the predetermined order is an order of usage instruction (c. 6, l. 59; see also c. 6, ll. 55-58).

Claim 10: Pargass et al disclose, in Fig. 4a, the component material is selected from the group consisting of a backsheet (22) (col. 8, ll. 47-48).

Claim 11: Pargass et al disclose n is selected from 11 to 120 (c. 5, ll. 4-5).

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass et al in view of Stavrulov (WO 00/13632).

Claim 4: Pargass et al disclose, at c. 6, ll. 55-59, that the predetermined orders include, *inter alia*, an order of usage instructions, a sequential indication means and combinations thereof, but does not expressly disclose an order illustrating story, an order for daily activity, an order for educational training, an order illustrating child care tips, and an order of sales promotion. Stavrulov, at page 3, lines 15-22 expresses the desire and clear motivation to increase the attractiveness of diapers with graphics in the form of texts and pictures of educational, entertaining, instructive or other nature attractive to a consumer thereby increasing consumer demand for the product. Stavrulov teaches diapers in packages having printed graphics in predetermined associations including, *inter alia*, an order illustrating story, (p. 7, l. 24) an order for daily activity (p. 7, l. 20-23), an order for educational training (p. 7, l. 18), a sequential indication means (p. 7, ll. 19-21), an order of usage instruction (p. 1, l. 20-21), an order illustrating child care tips (p. 7, l. 21), and an order of sales promotion (p. 12, l. 2).

Further, Stavrulov teaches the images do not repeat (p. 8, ll. 9-22). Stavrulov teaches the benefit of each of the printed graphics being different from each other graphic in the package of diapers is that the consumer receives the maximum educational, entertaining and instructional information with each purchase (p. 8, ll. 23-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the variety of graphics having predetermined orders as taught by Stavrulov in the predetermined order of graphics printed on the component material of the diapers of Pargass et al since Stavrulov states

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at page 11, lines 11-16 that such graphics attract consumer attention and stimulate the purchase of the product by the consumer.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4 10 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

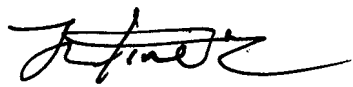
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
08/18/07



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SUPERVISORY PATENT EXAMINER
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8/20/07